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UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

Gopher Protocol, Inc., a Nevada corporation,

Case Number: 2:19-cv-01039

Plaintiff,

vs.

IDiscover Growth Fund, LLC, a US Virgin
Islands limited liability company,**ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION
[ECF NO. 5]**

Defendant.

Plaintiff, Gopher Protocol, Inc. ("Plaintiff") having submitted its Motion for Preliminary Injunction and Ex Parte Application for Temporary Restraining Order [ECF No. 5], and the Court having considered the pleadings, papers, evidence and documents on file herein and being otherwise fully advised following a hearing held on Friday, July 12, 2019, hereby finds as follows:

1. On December 3, 2018, a Securities Purchase Agreement ("SPA") was entered into between Plaintiff and Defendant, pursuant to which Plaintiff granted a security interest in all of Plaintiff's assets.¹ The SPA clearly identifies and sets forth the following relevant facts: (i) Plaintiff (identified in the SPA as the "Company") is a Nevada corporation;² (ii)

¹See Verified Complaint [ECF No. 2] at ¶12; see also Exhibit 1, attached thereto.

²Id. at Exhibit 1. This Court specifically makes no findings as to the validity of either parties claims in the arbitration proceeding.

1 any dispute, controversy, claim or action of any kind arising out of, relating to, or in
2 connection with the SPA, or in any way involving the parties or their respective affiliates
3 must be resolved by final and binding arbitration before a retired judge at JAMS in the
4 Virgin Islands;³ and (iii) either party is entitled to seek equitable and injunctive relief to
5 prevent any actual or threatened breach of the SPA or other agreements.⁴

6 2. There is a dispute between Defendant and Plaintiff. Consequently, and
7 consistent with the express terms of the SPA, Plaintiff filed its arbitration demand with
8 JAMS on Friday, June 7, 2019.⁵

9 3. On July 2, 2019 Honorable Philip Pro (Ret.) was appointed as Arbitrator in
10 *Gopher Protocol, Inc. vs. Discovery Growth Fund, LLC* (JAMS Ref # 1260005395)
11 following a selection process in which all parties participated.⁶ As such, currently there is a
12 pending arbitration as contemplated under the express terms of the SPA.⁷

13 4. On or about May 28, 2019, Defendant declared all amounts immediately due
14 and payable and scheduled the sale and disposition of all of the assets of Plaintiff for 10:00
15 AM Eastern Time on Monday, June 24, 2019 at Defendant's offices in St. Thomas, Virgin
16 Islands.⁸

17 5. On June 18, 2019, Plaintiff filed the instant action seeking exclusively
18 declaratory and injunctive relief.⁹ On that same date, Plaintiff also filed its Motion for
19 Preliminary Injunction and Ex Parte Application for Temporary Restraining Order.¹⁰

20 ³Id. at Exhibit 1 at §VI(H).

21 ⁴Id. at Exhibit 1 at §VI(I)(1).

22 ⁵Id. at ¶21; see also Exhibit 4, attached thereto.

23 ⁶See Declaration of Doug Davis In Support Of Reply In Support Of Motion For Preliminary Injunction And Ex
24 Parte Application For Temporary Restraining Order [ECF No. 5] ("Davis Dec.") at ¶3.

25 ⁷See Verified Complaint [ECF No. 2] at ¶21.

26 ⁸See Verified Complaint [ECF No. 2] at ¶22; see also Exhibit 5, attached thereto.

27 ⁹Id.

1 6. This Court granted the Ex Parte application for Temporary Restraining Order
2 temporarily enjoining the Defendant from selling, foreclosing upon, encumbering,
3 dissipating, or otherwise transferring any of the Plaintiff's assets upon the Plaintiff's posting
4 of security in the amount of \$5,000.¹¹

5 7. Thereafter, this Court set and conducted a hearing on Plaintiff's Motion for
6 Preliminary Injunction for July 12, 2019.¹²

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED and DECREED that, as of the date of the
9 hearing, there is jurisdiction and venue, however, the Court will further review the question
10 of jurisdiction and venue as it considers the Defendant's pending *Motion to Dismiss*
11 *Plaintiff's Verified Complaint for Injunctive Relief* [ECF No. 13].

12 IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary Injunction is
13 GRANTED as it has established "(1) a likelihood of success on the merits, (2) that the
14 plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the
15 balance of equities tip in its favor, and (4) that the public interest favors an injunction."
16 Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as
17 amended (Mar. 11, 2014) (*citing* Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22
18 (2008)). In its Verified Complaint, GPI seeks a judicial determination that, among other
19 things, pursuant to the SPA, the parties are required to attend arbitration to resolve any
20 dispute, controversy, claim or action.¹³

21 Here, Plaintiff enjoys a likelihood of success in prevailing on its declaratory relief
22 claims. Further, it appears that Plaintiff would suffer irreparable harm absent injunctive

23 ¹⁰See Motion for Preliminary Injunction and Ex Parte Application for Temporary Restraining Order
24 [ECF No. 5].

25 ¹¹See Order [ECF No. 7].

26 ¹²See Order [ECF No. 12].

27 ¹³Id. at ¶31.

1 relief. Notably, any foreclosure sale of the Plaintiff's assets would put the Plaintiff out of
2 business rendering the pending arbitration moot. Simply put, not only would allowing the
3 Defendant to sell off all of the Plaintiff's assets prior to arbitration result in irreparable harm,
4 but clearly evidences the balance of equities favors Gopher where the injunction will prevent
5 shutting down Gopher's business.

6 Finally, "[w]hen the reach of an injunction is narrow, limited only to the parties, and
7 has no impact on non-parties, the public interest will be at most a neutral factor in the
8 analysis rather than one that favor[s] in [granting or] denying the preliminary injunction."
9 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1138-39 (9th Cir. 2009) (internal quotation marks
10 omitted). Here, among other things, there is a public interest in the enforcement of contracts
11 and requiring parties that have elected arbitration as a forum for disputes to attend
12 arbitration. As such, the public interest favors Plaintiff.

13 IT IS FURTHER ORDERED that the security amount of \$5,000 previously posted
14 combined with the existing security interest in the Plaintiff's assets at their current value
15 shall be sufficient security. A court may only issue injunctive relief "if the movant gives
16 security in an amount that the court considers proper to pay the costs and damages sustained
17 by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c).
18 District courts have discretion in setting the amount of bond. See Save Our Sonoran, Inc. v.
19 Flowers, 408 F.3d 1113, 1126 (9th Cir. 2004).

20 Dated this 18th day of July, 2019.

21 By 
22 United States District Court Judge
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